

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Jareal Edwards,  
Petitioner  
v.  
Jo Gentry, et al.,  
Respondents

**2:15-cv-00673-JAD-NJK**

**Order Directing Response**

Because pro se § 2254 petitioner Jareal Edwards's petition is partially unexhausted, I directed Edwards to notify the court by December 17, 2016, how he wishes to proceed with this action. Edwards timely filed a response, but that response is ambiguous. He states that he desires "to return to the state court to exhaust [his] unexhausted claims and present them before a Judge" but that he does not need a stay and abeyance.<sup>1</sup>

The above "option" would require the dismissal of this action, which may not be what Edwards wants.<sup>2</sup> Edwards can present claims to the state courts any time that he wants to, without regard to this federal action, subject to the procedural rules applicable in the state courts. Thus he need not obtain dismissal of this action to exhaust his claims in state court. The choice that Edwards needs to make concerns what will happen *in this federal action* while he seeks to exhaust his unexhausted claims in state court. His options include: (1) filing a motion to stay this federal action while he exhausts the claims in state court, *without* the unexhausted claims being dismissed during the stay, subject to the requirements of *Rhines v. Weber*, 544 U.S. 269 (2005); (2) filing a motion to stay this action while he exhausts the claims, *with* the unexhausted claims being dismissed without prejudice during the stay but being subject to possible time-bar issues thereafter, *see King v. Ryan*,

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<sup>1</sup> ECF No. 10 at 2.

<sup>2</sup> *See Rose v. Lundy*, 455 U.S. 509 (1982).

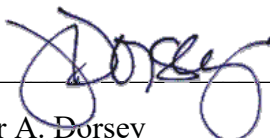
1 564 F.3d 1133, 1140-43 (9th Cir. 2009); (3) dismissal of only the unexhausted claims; or (4)  
2 dismissal of the entire petition.

3 I give Edwards one last opportunity to make a proper election about what relief to request in  
4 this federal action regarding the unexhausted claims. If Edwards fails by January 23, 2017, to either  
5 (a) move for a stay under *Rhines*, (b) move for a stay with dismissal of the unexhausted claims under  
6 *King*, or (c) request a dismissal of only the unexhausted claims, then the entire petition will be  
7 dismissed without further notice. Edwards will not be given another opportunity to make a proper  
8 election as to the relief requested.

9 **Conclusion**

10 Accordingly, IT IS HEREBY ORDERED that Edwards must notify the court how he wishes  
11 to proceed with his unexhausted claims in this action by **January 23, 2017**. If Edwards does not  
12 timely respond or otherwise request relief, this action will be dismissed without prejudice and  
13 without further notice.

14 Dated this 23rd day of December, 2016.

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17 Jennifer A. Dorsey  
18 United States District Judge  
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